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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,  
Plaintiffs in Error,  
vs.  
UNITED STATES OF AMERICA,  
Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court of  
the Western District of Washington, Northern Division.

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FILED

AUG 25 1925

F. D. MONCKTON



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JOHN THOMAS,

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vs.

UNITED STATES OF AMERICA,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

FRED C. BROWN, Esquire, Attorney for Plaintiffs in Error,

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310 Federal Building, Seattle, Washington.

JOHN W. HOAR, Esquire, Attorney for Defendant in Error,

303 Federal Building, Seattle, Washington.

[1\*]

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(Comm'r #2737—Bail \$750 each.)

JEREMIAH NETERER.

United States District Court, Western District of  
Washington, Northern Division.

November, 1924, Term.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

INFORMATION.

BE IT REMEMBERED that Thos. P. Revelle,  
attorney of the United States of America for the

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\*Page-number appearing at foot of page of original certified Transcript of Record.

Western District of Washington, who for the said United States in this behalf prosecutes in his own person, comes here into the District Court of the said United States for the district aforesaid on this 28 day of February, in this same term, and for the said United States gives the Court here to understand and be informed [2]

### COUNT I.

That on the twenty-ninth day of August, in the year of Our Lord one thousand nine hundred and twenty-four, at the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, FRANK MILLER, ANTON BRONICH, and JOHN THOMAS, then and there being, did then and there knowingly, willfully, and unlawfully manufacture certain intoxicating liquor, to wit, four hundred twenty-two (422) gallons of a certain liquor known as wine, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, and which said manufacturing by the said FRANK MILLER, ANTON BRONICH, and JOHN THOMAS as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [3]

And the said United States Attorney for the said

Western District of Washington further informs the Court:

COUNT II.

That on the twenty-ninth day of August, in the year of Our Lord one thousand nine hundred and twenty-four, at the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, FRANK MILLER, ANTON BRONICH, and JOHN THOMAS, then and there being, did then and there knowingly, willfully, and unlawfully have and possess certain intoxicating liquor, to wit, four hundred twenty-two (422) gallons of a certain liquor known as wine, and two (2) ounces of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, intended then and there by the said FRANK MILLER, ANTON BRONICH, and JOHN THOMAS, for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, bartering, exchanging, giving away, and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said FRANK MILLER, ANTON BRONICH, and JOHN THOMAS, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided and

against the peace and dignity of the United States of America. [4]

And the said United States Attorney for the said Western District of Washington further informs the Court:

### COUNT III.

That on the twenty-ninth day of August, in the year of Our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, and at a certain place situated at 139-27th Avenue North, in the said city of Seattle, FRANK MILLER, ANTON BRONICH, and JOHN THOMAS, then and there being, did then and there and therein knowingly, willfully, and unlawfully conduct and maintain a common nuisance by then and there manufacturing, keeping, selling, and bartering intoxicating liquors, to wit, wine, distilled spirits, and other intoxicating liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, and which said maintaining of such nuisance by the said FRANK MILLER, ANTON BRONICH, and JOHN THOMAS, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute

in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,

United States Attorney.

J. W. HOAR,

Assistant United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 28, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [5]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

vs.

Plaintiff,

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

PETITION TO SUPPRESS EVIDENCE AND  
FOR RETURN OF PROPERTY (FRANK  
MILLER).

Your petitioner, Frank Miller, respectfully represents that he is one of the defendants in the above-entitled cause; that at all the times hereinafter mentioned he resided at 139-27th Avenue North, Seattle, Washington; that said premises



are and were a private dwelling and at all the times herein mentioned were occupied exclusively as such; and that at no time was any part of said premises used for any business purposes such as a store, shop, saloon, restaurant, hotel or boarding-house, nor was any intoxicating liquor sold or kept for sale therein.

Your petitioner avers that on the 27th day of August, 1924, Federal Prohibition Officers entered your petitioner's aforesaid dwelling, and over your petitioner's protest and objections, seized therein and removed therefrom intoxicating liquor and empty containers then and there in your petitioner's lawful custody and possession; and your petitioner is informed and believes that said Federal Prohibition Officers aforesaid seized said property and took the same into their possession for the purpose of procuring evidence against your petitioner and other persons on a charge of crime; that thereafter they were delivered by the said Federal Prohibition Officers to the United States District Attorney for the Western District of Washington in whose possession they still are; that the said United States District Attorney for the Western District of Washington issued and filed an information against your petitioner, and [6] intends to use the same upon the trial of said information, all in violation of your petitioner's rights under the Fifth Amendment to the Constitution of the United States.

Your petitioner further avers that in making said seizure said Federal Prohibition Officers acted under the pretended authority of a search-warrant issued by Robert McClelland, United States Com-

missioner for the Western District of Washington, a copy of which together with the official return endorsed thereon, is hereto attached and made a part hereof by this record and marked Exhibit "A."

Your petitioner further avers that said search-warrant was issued by said United States Commissioner solely upon the affidavit of J. M. Simmons, a Federal Prohibition Agent, a copy of which affidavit is hereto attached and made a part hereof by this reference and marked Exhibit "B."

And your petitioner respectfully represents that said search-warrant was wholly irregular and void and was issued and executed in violation of the Fourth and Fifth Amendments to the Constitution of the United States and of Title XI of the Act of Congress of June 15, 1917, commonly known as the Espionage Act, and of the Act of Congress of October 28, 1919, commonly known as the National Prohibition Act, for all of the following reasons:

1. Said warrant was issued and executed for the purpose of procuring from your petitioner's possession evidence upon which to indict and prosecute him for crime, in violation of the Fifth Amendment to the Constitution of the United States.

2. Said search-warrant was issued and employed to search a private dwelling occupied as such by your petitioner, in violation of Section 25 of the National Prohibition Act.

3. Said search-warrant was void because neither the warrant itself nor the affidavits upon which it was issued named the owner or occupant of the premises to be searched, nor described with reason-

able [7] particularity, or at all, the property to be seized, or the property which was seized thereunder.

4. Said search-warrant was void because the affidavit upon which the same was issued did not set forth any facts tending to establish the grounds of the application, nor any facts from which said United States Commissioner could determine that said grounds existed.

WHEREFORE, your petitioner prays an order, directing the United States District Attorney to return to him his property aforesaid.

FRED C. BROWN,  
Attorney for Petitioner.

State of Washington,  
County of King,—ss.

Fred C. Brown, being first duly sworn, on oath deposes and says: That he is the attorney for the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true except as to those matters therein alleged on information and belief and as to those matters he believes it to be true.

FRED C. BROWN.

Subscribed and sworn to before me this 9th day of April, 1925.

JACOB KOLING,  
Notary Public in and for the State of Washington,  
Residing in Seattle. [8]



EXHIBIT "A."

Local Form No. 103.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and His Deputies, or Either of Them, and to any Federal Prohibition Officer or Agent, or the Federal Prohibition Director of the State of Washington, or any Federal Prohibition Agent of said State, and to the United States Commissioner of Internal Revenue, His Assistants, Deputies, Agents, or Inspectors, GREETING:

WHEREAS, J. M. Simmons, a Federal Prohibition Agent of the State of Washington, has this day made application for a Search-Warrant and made oath in writing, supported by affidavits, before the undersigned, a Commissioner of the United States for the Western District of Washington, charging that a crime is being committed against the United States in violation of the NATIONAL PROHIBITION ACT of Congress by one JOHN DOE COSTELLO, RICHARD ROE MORENO and JANE DOE MAORI—true names unknown, proprietors and their employees at 139 27th Ave. North, who was, on the 27th day of August, 1924, and is, at said time and place, possessing and selling

intoxicating liquor, all for beverage purposes, on certain premises in the city of Seattle, County of King, State of Washington, and in said District, more fully described as

139 27th Avenue North, Seattle, Wash;  
and on the premises used, operated and occupied in connection therewith and under the control and jurisdiction of said above parties;

AND WHEREAS, the undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the PRESIDENT OF THE UNITED STATES to enter said premises with such proper assistance as may be necessary, in the daytime, or night-time, and then and there diligently investigate and search the same and into and concerning said crime, and to search the person of said above named persons, and from him or her or from said premises seize any or all of the said property, documents, papers and materials so used in or about the commission of said crime, and any and all intoxicating liquor and the containers thereof, and then and there take the same into your possession, and true report make of your said acts as provided by law.

GIVEN under my hand and seal this 27th day of August, 1924.

[Seal] ROBT. W. McCLELLAND,  
United States Commissioner, Western District of  
Washington. [9]

RETURN OF SEARCH-WARRANT.

Returned, this 29th day of Aug., A. D. 1924.

Served, and search made as within directed, upon  
which search I found

7-52 gal. wine.

3-5 gal. kegs wine.

4 empty 50-gal. bbls.

4-5 gal kegs.

empties, etc. papers.

and duly inventoried the same as above, according to law.

W. M. WHITNEY.

(Signature.)

I, \_\_\_\_\_, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of the property taken by me on the warrant.

W. M. WHITNEY.

(Signature.)

Subscribed and sworn to before me this 29 day of Aug. 1924.

ROBT. W. McCLELLAND,

United States Commissioner.

\_\_\_\_\_ District of Wash.

EXHIBIT "B."

Local Form No. 100.

United States of America,

Western District of Washington,

Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR  
SEARCH-WARRANT.

J. M. SIMMONS, being first duly sworn, on his

oath deposes and says: THAT he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said District; that a crime against the Government of the United States in violation of the NATIONAL PROHIBITION ACT of Congress has been and is being committed in this, that, in the city of Seattle, County of King, State of Washington, and within the said District and Division above named, one John Doe Costello, Richard Roe Moreno and Jane Doe Maori, true names to affiant unknown, proprietors and their employees at 139 27th Ave. North, on the 27th day of August, 1924, and thereafter was and is possessing and selling intoxicating liquor, all for beverage purposes; and that in addition thereto affiant on said date and on previous occasions made an investigation of said premises and smelled the odor of intoxicating liquor, and has seen parties coming from said premises carrying packages which resembled containers of intoxicating liquor all on the premises described as 139 27th Avenue, North, Seattle, Wash. and on the premises used, operated and occupied in connection therewith and under control and occupancy of said above parties, all being in the County of King, State of Washington, and in said District, and all of said premises being occupied or under the control of the parties above named, proprietors and their employees, ALL in violation of the Statute in such cases provided and against the peace and dignity of the United States of America.

.

WHEREFORE this said affiant hereby asks that a Search-Warrant be issued directed to the United States Marshal for the said District, and his deputies, and to any National Prohibition Officer or Agent or deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said parties above named, proprietors and their employees, and the premises above described, and seizure of any and all of the above-described property and intoxicating liquor and means of committing the crime aforesaid, all as provided by law and said Act.

W. M. WHITNEY.

Copy of within petition rec'd this 10th day of April, 1925.

J. W. HOAR,  
Attorney for Plaintiff.

Subscribed and sworn to before me this 27th day of August, 1924.

ROBT. W. McCLELLAND,  
United States Commissioner, Western District of  
Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. April 10, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [10]

United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

DEFENDANT'S SUPPORTING AFFIDAVIT  
(FRANK MILLER).

United States of America,  
Western District of Washington,  
Northern Division, King County,—ss.

Frank Miller, being first duly sworn, upon oath deposes and says: That he is an Austrian; that he is unmarried and for some time previous to the issuance of the search-warrant herein he resided at 139 27th Avenue North, Seattle, King County, Washington, as his sole residence, sleeping there and preparing his meals there; that since said service of said search-warrant he has and still continues to reside at said address as his sole residence for all purposes; that at and previous to the issuance of the search-warrant access to the basement of said house was reached by steps leading from the hall on the floor above directly into the basement or through a door from the outside of the house, and



the basement was used for storage of fuel and other articles generally kept in a basement.

FRANK MILLER.

Subscribed and sworn to before me this 27th day of April, 1925.

[Seal]

FRED C. BROWN,

Notary Public in and for the State of Washington,  
Residing in Seattle. [10 $\frac{1}{2}$ ]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

PETITION TO SUPPRESS EVIDENCE AND  
FOR RETURN OF PROPERTY (ANTON  
BRONICH).

Your petitioner, Anton Bronich, respectfully represents that he is one of the defendants in the above-entitled cause; that at all the times hereinafter mentioned he resided at 139 27th Avenue North, Seattle, Washington; that said premises are and were a private dwelling and at all the times herein mentioned were occupied exclusively as such; and that at no time was any part of said

premises used for any business purposes such as a store, shop, saloon, restaurant, hotel or boarding-house, nor was any intoxicating liquor sold or kept for sale therein.

Your petitioner avers that on the 27th day of August, 1924, Federal Prohibition Officers entered your petitioner's aforesaid dwelling and, over your petitioner's protest and objections, seized therein and removed therefrom intoxicating liquor and empty containers then and there in your petitioner's lawful custody and possession; and your petitioner is informed and believes that said Federal Prohibition Officers aforesaid seized said property and took the same into their possession for the purpose of procuring evidence against your petitioner and other persons on a charge of crime; that thereafter they were delivered by the said Federal Prohibition Officers to the United States District Attorney for the Western District of Washington in whose possession they still are; that the said United States District Attorney for the Western District of Washington filed an information against your petitioner, and intends [11] to use the same upon the trial of said information, all in violation of your petitioner's rights under the Fifth Amendment to the Constitution of the United States.

Your petitioner further avers that in making said seizure said Federal Prohibition Officers acted under the pretended authority of a search-warrant issued by Robert McClelland, United States Commissioner for the Western District of Washington, a copy of which together with the official return en-



dorsed thereon, is hereto attached and made a part hereof by this record and marked Exhibit "A."

Your petitioner further avers that said search-warrant was issued by said United States Commissioner solely upon the affidavit of J. M. Simmons, a Federal Prohibition Agent, a copy of which affidavit is hereto attached and made a part hereof by this reference and marked Exhibit "B."

And your petitioner respectfully represents that said search-warrant was wholly irregular and void and was issued and executed in violation of the Fourth and Fifth Amendments to the Constitution of the United States and of Title XI of the Act of Congress of June 15, 1917, commonly known as the Espionage Act, and of the Act of Congress of October 28, 1919, commonly known as the National Prohibition Act, for all of the following reasons:

1. Said warrant was issued and executed for the purpose of procuring from your petitioner's possession evidence upon which to indict and prosecute him for crime, in violation of the Fifth Amendment to the Constitution of the United States.

2. Said search-warrant was issued and employed to search a private dwelling occupied as such by your petitioner, in violation of Section 25 of the National Prohibition Act.

3. Said search-warrant was void because neither the warrant itself nor the affidavits upon which it was issued named the owner [12] or occupant of the premises to be searched, nor described with reasonable particularity, or at all, the property to be seized, or the property which was seized thereunder.

4. Said search-warrant was void because the affidavit upon which the same was issued did not set forth any facts tending to establish the grounds of the application; nor any facts from which said United States Commissioner could determine that said grounds existed.

WHEREFORE, your petitioner prays an order, directing the United States District Attorney to return to him his property aforesaid.

FRED C. BROWN,  
Attorney for Petitioner.

State of Washington,  
County of King,—ss.

Anton Bronich, being first duly sworn, on oath deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true except as to those matters therein alleged on information and belief and as to those matters he believes it to be true.

ANTON BRONICH.

Copy of within petition rec'd this 10th day of April, 1925.

J. W. HOAR,  
Attorney for Plaintiff.

Subscribed and sworn to before me this 3d day of April, 1925.

FRED C. BROWN,  
Notary Public in and for the State of Washington,  
Residing in Seattle.

Endorsed. [13]

EXHIBIT "A."

Local Form No. 103.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and His Deputies, or Either of Them, and to Any Federal Prohibition Officer or Agent, or the Federal Prohibition Director of the State of Washington, or Any Federal Prohibition Agent of Said State, and to the United States Commissioner of Internal Revenue, His Assistants, Deputies, Agents, or Inspectors, GREETING;

WHEREAS, J. M. Simmons, a Federal Prohibition Agent of the State of Washington, has this day made application for a Search-Warrant and made oath in writing, supported by affidavits, before the undersigned, a Commissioner of the United States for the Western District of Washington, charging that a crime is being committed against the United States in violation of the NATIONAL PROHIBITION ACT of Congress by one JOHN DOE COSTELLO—RICHARD ROE MORENO and JANE DOE MAORI—true names unknown, Proprietors and their employes at 139-27th Ave. North, who was, on the 27th day of August, 1924,

and is at said time and place, possessing and selling intoxicating liquor, all for beverage purposes, on certain premises in the City of Seattle, County of King, State of Washington, and in said District, more fully described as

139-27th Avenue North—Seattle, Wash.;

and on the premises used, operated and occupied in connection therewith and under the control and jurisdiction of said above parties;

AND WHEREAS, the undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the PRESIDENT OF THE UNITED STATES to enter said premises with such proper assistance as may be necessary, in the daytime, or night-time, and then and there diligently investigate and search the same and into and concerning said crime, and to search the person of said above-named persons, and from him or her or from said premises seize any or all of the said property, documents, papers and materials so used in or about the commission of said crime, and any and all intoxicating liquor and the containers thereof, and then and there take the same into your possession, and true report make of your said acts as provided by law.

GIVEN under my hand and seal this 27th day of August, 1924.

[Seal] ROBT. W. McCLELLAND,  
United States Commissioner, Western District of  
Wash. [14]

RETURN TO SEARCH-WARRANT.

Returned, this 29th day of August, A. D. 1924.  
Served, and Search made as within directed, upon  
which search I found

7-52 gal. wine. 3-5 gal. kegs wine.

4 empty 50 gal. bbls. 4-5 gal. kegs.

empties, etc., papers.

and duly inventoried the same as above, according  
to law.

W. M. WHITNEY.

(Signature.)

I, ————— the officer by whom this warrant  
was executed, do swear that the above inventory  
contains a true and detailed account of the property  
taken by me on the warrant.

W. M. WHITNEY.

(Signature.)

Subscribed and sworn to before me this 29 day  
of Aug., 1924.

ROBT. W. McCLELLAND,  
United States Commissioner.

————— District of Wash.

## EXHIBIT "B."

Local Form No. 100.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR  
SEARCH-WARRANT.

J. M. Simmons, being first duly sworn, on his oath deposes and says: THAT he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said District; that a crime against the Government of the United States in violation of the NATIONAL PROHIBITION ACT of Congress has been and is being committed in this, that, in the City of Seattle, County of King, State of Washington, and within the said District and Division above named, one John Doe Costello, Richard Roe Moreno and Jane Doe Maori, true names to affiant unknown, proprietors and their employees at 139-27th Ave. North, on the 27th day of August, 1924, and thereafter was and is possessing and selling intoxicating liquor, all for beverage purposes; and that in addition thereto affiant on said date and on previous occasions made an investigation of said premises and smelled the odor of intoxicating liquor, and has seen parties coming from said premises carrying packages which resembled containers of intoxicating liquor all on the premises described as 139 27th Avenue, North, Seattle, Wash. and on the premises used, operated and occupied in con-



nection therewith and under control and occupancy of said above parties, all being in the County of King, State of Washington, and in said District, and all of said premises being occupied or under the control of the parties above named, Proprietors and their employees, ALL in violation of the Statute in such cases provided and against the peace and dignity of the United States of America.

WHEREFORE this said affiant hereby asks that a Search-Warrant be issued directed to the United States Marshal for the said District, and his deputies, and to any National Prohibition Officer or Agent or deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said parties above named, Proprietors and their employees, and the premises above described, and seizure of any and all of the above-described property and intoxicating liquor and means of committing the crime aforesaid, all as provided by law and said Act.

W. M. WHITNEY.

Copy of within petition rec'd this 10th day of April, 1925.

J. W. HOAR,  
Attorney for Plaintiff.

Subscribed and sworn to before me this 27th day of August, 1924.

ROBT. W. McCLELLAND,  
United States Commissioner, Western District of  
Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 10, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [15]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

DEFENDANT'S SUPPORTING AFFIDAVIT  
(ANTON BRONICH).

United States of America,  
Western District of Washington,  
Northern Division, King County,—ss.

Anton Bronich, being first duly sworn, upon oath deposes and says: That he is an Austrian; that he is unmarried and for nine (9) months before the service of the search-warrant herein he had resided at 139 27th Avenue North, Seattle, King County, Washington, as his sole residence, sleeping there and preparing his meals therein; that since said service he has, and still continues, to reside at said address as his sole residence for all purposes; that at and previous to the issuance of the search-war-



rant, access to the basement of said house was reached by steps leading from the hall on the floor above directly into the basement or through a door from outside of the house, and the basement was used for storage of fuel and other articles generally kept in a basement.

ANTON BRONICH.

Subscribed and sworn to before me this 25 day of April, 1925.

[Seal]

FRED C. BROWN,  
Notary Public in and for the State of Washington,  
Residing in Seattle. [15½]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

PETITION TO SUPPRESS EVIDENCE AND  
FOR RETURN OF PROPERTY (JOHN  
THOMAS).

Your petitioner, John Thomas, respectfully represents that he is one of the defendants in the above-entitled cause; that at all the times hereinafter mentioned he resided at 139 27th Avenue North,

Seattle, Washington; that said premises are and were a private dwelling and at all the times herein mentioned were occupied exclusively as such; and that at no time was any part of said premises used for any business purposes such as a store, shop, saloon restaurant, hotel or boarding-house, nor was any intoxicating liquor sold or kept for sale therein.

Your petitioner avers that on the 27th day of August, 1924, Federal Prohibition Officers entered your petitioner's aforesaid dwelling and, over your petitioner's protest and objections, seized therein and removed therefrom intoxicating liquor and empty containers then and there in your petitioner's lawful custody and possession; and your petitioner is informed and believes that said Federal Prohibition Officers aforesaid seized said property and took the same into their possession for the purpose of procuring evidence against your petitioner and other persons on a charge of crime; that thereafter they were delivered by the said Federal Prohibition Officers to the United States District Attorney for the Western District of Washington in whose possession they still are; that the said United States District Attorney for the Western District of Washington filed an information against your petitioner, and intends [16] to use the same upon the trial of said information, all in violation of your petitioner's rights under the Fifth Amendment to the Constitution of the United States.

Your petitioner further avers that in making said seizure said Federal Prohibition Officers acted under the pretended authority of a search-warrant

issued by Robert McClelland, United States Commissioner for the Western District of Washington, a copy of which together with the official return endorsed thereon is hereto attached and made a part hereof by this record and marked Exhibit "A."

Your petitioner further avers that said search-warrant was issued by said United States Commissioner solely upon the affidavit of J. M. Simmons, a Federal Prohibition Agent, a copy of which affidavit is hereto attached and made a part hereof by this reference and marked Exhibit "B."

And your petitioner respectfully represents that said search-warrant was sholly irregular and void and was issued and executed in violation of the Fourth and Fifth Amendments to the Constitution of the United States and of Title XI of the Act of Congress of June 15, 1917, commonly known as the Espionage Act, and of the Act of Congress of October 28, 1919, commonly known as the National Prohibition Act, for all of the following reasons:

1. Said warrant was issued and executed for the purpose of procuring from your petitioner's possession evidence upon which to indict and prosecute him for crime, in violation of the Fifth Amendment to the Constitution of the United States.

2. Said search-warrant was issued and employed to search a private dwelling occupied as such by your petitioner, in violation of Section 25 of the National Prohibition Act.

3. Said search-warrant was void because neither the warrant itself nor the affidavits upon which it was issued named the owner [17] or occupant of

the premises to be searched, nor described with reasonable particularity, or at all, the property to be seized, or the property which was seized thereunder.

4. Said search-warrant was void because the affidavit upon which the same was issued did not set forth any facts tending to establish the grounds of the application; nor any facts from which said United States Commissioner could determine that said grounds existed.

WHEREFORE, your petitioner prays an order, directing the United States District Attorney to return to him his property aforesaid.

FRED C. BROWN,  
Attorney for Petitioner.

State of Washington,  
County of King,—ss.

John Thomas, being first duly sworn, upon oath deposes and says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true except as to those matters therein alleged on information and belief and as to those matters he believes it to be true.

JOHN THOMAS.

Subscribed and sworn to before me this 9th day of April, 1925.

FRED C. BROWN,  
Notary Public in and for the State of Washington,  
Residing in Seattle. [18]

EXHIBIT "A."

Local Form No. 103.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and His Deputies, or Either of Them, and to Any Federal Prohibition Officer or Agent, or the Federal Prohibition Director of the State of Washington, or Any Federal Prohibition Agent of said State, and to the United States Commissioner of Internal Revenue, His Assistants, Deputies, Agents, or Inspectors, GREETING:

WHEREAS, J. M. Simmons, a Federal Prohibition Agent of the State of Washington, has this day made application for a Search-Warrant and made oath in writing, supported by affidavits, before the undersigned, a Commissioner of the United States for the Western District of Washington, charging that a crime is being committed against the United States in violation of the NATIONAL PROHIBITION ACT of Congress by one JOHN DOE COSTELLO—RICHARD ROE MORENO and JANE DOE MAORI—true names unknown, Proprietors and their employees at 139 27th Ave. North, who was, on the 27th day of August, 1924, and is at said time and place, possessing and selling intoxicating



liquor, all for beverage purposes, on certain premises in the City of Seattle, County of King, State of Washington, and in said District, more fully described as

139 27th Avenue North—Seattle, Wash;  
and on the premises used, operated and occupied in connection therewith and under the control and jurisdiction of said above parties;

AND WHEREAS, the undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the PRESIDENT OF THE UNITED STATES to enter said premises with such proper assistance as may be necessary, in the daytime, or night-time, and then and there diligently investigate and search the same and into and concerning said crime, and to search the person of said above named persons, and from him or her or from said premises seize any or all of the said property, documents, papers and materials so used in or about the commission of said crime, and any and all intoxicating liquor and the containers thereof, and then and there take the same into your possession, and true report make of your said acts as provided by law.

Given under my hand and seal this 27th day of August, 1924.

[Seal] ROBT. W. McCLELLAND,  
United States Commissioner, Western District of  
Wash. [19]

RETURN TO SEARCH-WARRANT.

Returned, this 29th day of Aug., A. D. 1924.

Served, and search made as within directed, upon which search I found

7-52 gal. wine,                      3-5 gal. kegs wine,  
4 empty 50 gal. bbls.,          4-5 gal. kegs,  
empties, etc., papers,  
and duly inventoried the same as above, according to law.

W. M. WHITNEY.

(Signature.)

I, —————, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of the property taken by me on the warrant.

W. M. WHITNEY.

(Signature.)

Subscribed and sworn to before me this 29 day of Aug., 1924.

ROBT. W. McCLELLAND,

United States Commissioner.

————— District of Wash.

EXHIBIT "B."

Local Form No. 100.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR  
SEARCH-WARRANT.

J. M. Simmons, being first duly sworn, on his

oath deposes and says: THAT he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said District; that a crime against the Government of the United States in violation of the NATIONAL PROHIBITION ACT of Congress has been and is being committed in this, that, in the City of Seattle, County of King, State of Washington, and within the said District and Division above named, one John Doe Costello, Richard Roe Moreno and Jane Doe Maori, true names to affiant unknown, proprietors and their employees at 139 27th Av. North, on the 27th day of August, 1924, and thereafter was and is possessing and selling intoxicating liquor, all for beverage purposes; and that in addition thereto affiant on said date and on previous occasions made an investigation of said premises and smelled the odor of intoxicating liquor, and has seen parties coming from said premises carrying packages which resembled containers of intoxicating liquor all on the premises described as 139 27th Avenue, North, Seattle, Wash., and on the premises used, operated and occupied in connection therewith and under control and occupancy of said above parties, all being in the County of King, State of Washington, and in said District, and all of said premises being occupied or under the control of the parties above named. Proprietors and their employees, ALL in violation of the Statute in such cases provided and against the peace and dignity of the United States of America.



WHEREFORE this said affiant hereby asks that a Search-Warrant be issued directed to the United States Marshal for the said District, and his deputies, and to any National Prohibition Officer or Agent or deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said parties above named, Proprietors and their employees, and the premises above described, and seizure of any and all of the above described property and intoxicating liquor and means of committing the crime aforesaid, all as provided by law and said Act.

W. M. WHITNEY.

Copy of within petition rec'd this 10th day of April, 1925.

J. W. HOAR,  
Attorney for Plaintiff.

Subscribed and sworn to before me this 27th day of August, 1924.

ROBT. W. McCLELLAND,  
United States Commissioner, Western District of  
Washington.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 10, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [20]

United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,  
Defendants.

DEFENDANT'S SUPPORTING AFFIDAVIT  
(JOHN THOMAS).

United States of America,  
Western District of Washington,  
Northern Division, King County,—ss.

John Thomas, being first duly sworn, upon oath deposes and says: That he is an Austrian; that he is unmarried and for nine (9) months before the service of the search-warrant herein he had resided at 139 27th Avenue North, Seattle, King County, Washington, as his sole residence, sleeping there and preparing his meals therein; that since said service he has, and still continues to, reside at said address as his sole residence for all purposes; that at and previous to the issuance of the search-warrant, access to the basement of said house was reached by steps leading from the hall on the floor above directly into the basement or through a door from outside of the house, and the basement was

used for storage of fuel and other articles generally kept in a basement.

JOHN THOMAS.

Subscribed and sworn to before me this 27 day of April, 1925.

[Seal]

FRED C. BROWN,

Notary Public in and for the State of Washington,  
Residing in Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Apr. 27, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [20½]

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In the United States District Court for the Western  
District of Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER et al.,

Defendants.

DECISION ON MOTION TO SUPPRESS EVIDENCE AND TO STRIKE AFFIDAVIT OF W. M. WHITNEY.

Filed May 13, 1925.

JEREMIAH NETERER, District Judge:

This matter is before the Court upon a motion

to suppress the evidence and to strike the affidavit of W. M. Whitney.

The Court holds by written opinion filed that the affidavit upon which the search-warrant was issued is insufficient, but denies the motion to suppress the evidence for the reason that the evidence may be admissible notwithstanding the unlawful search.

It is ordered that the motion to suppress be denied and the affidavit of W. M. Whitney be stricken. To the denial of the defendants' motion to suppress the evidence the defendants each duly except and the exceptions are noted.

NETERER,  
U. S. District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 13, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [21]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

PLEA—EACH DEFENDANT.

Now on this 19th day of May, 1925, the above defendants come into open court accompanied by their attorney Fred C. Brown, and each enters his plea of not guilty to the charges herein against him.

Journal #13, page 345. [22]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH and  
JOHN THOMAS,

Defendants.

TRIAL.

Now on this 23d day of June, 1925, this cause comes on for trial with all parties present. Fred C. Brown is present as counsel for defendants. A jury is empanelled and sworn as follows: Augustine Brookmeyer, Thomas E. Bremer, J. D. Storms, E. A. Borgen, Hugo Albrecht, B. J. Bloomskog, C. W. Miley, Gust E. Rasmussen, Chas. K. Miller, Ruel A. Russel, Caroline Jensen, and Clayton Aldridge. Opening statement is

waived by both sides. Government witnesses are sworn and examined as follows: W. M. Whitney, J. A. Johnson, C. W. Cline and A. A. Jacobson. Government exhibits numbered 1, 2, 3, 4, 5 and 6 and 7 are introduced as evidence. Government rests. Summary is made to the jury by attorneys for both sides. The jury after being instructed by the Court, retires for deliberation and return into court later with verdict. Verdict is received and reads as follows:

“We, the jury in the above-entitled cause, find the defendant, Frank Miller, is guilty as charged in Count 1, of the Information herein; and further find the defendant, Anton Bronich, is guilty as charged in Count 1 of the Information herein; and further find the defendant John Thomas is guilty as charged in Count I of the Information herein; and further find the defendant, Frank Miller is guilty as charged in Count II of the Information herein; and further find the defendant Anton Bronich is guilty as charged in Count II of the Information herein; and further find the [23] defendant, John Thomas is guilty as charged in Count II of the Information herein; and further find the defendant, Frank Miller is guilty as charged in Count III of the Information herein; and further find the defendant Anton Bronich is guilty as charged in Count III of the Information herein; and further find the defendant, John Thomas, is guilty as charged in Count III of the Information herein; Ruel A. Russell, foreman.

Sentence is set for July 6, 1925.

Journal #13, page 449. [24]



In the District Court of the United States for  
the Western District of Washington, Northern  
Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

### VERDICT.

We, the jury in the above-entitled cause, find the defendant, Frank Miller, is guilty as *charge* in Count I of the Information herein; and further find the defendant, Anton Bronich, is guilty as charged in Count I of the Information herein; and further find the defendant, John Thomas, is guilty as charged in Count I of the Information herein; and further find the defendant, Frank Miller, is guilty as charged in Count II of the Information herein; and further find the defendant, Anton Bronich, is guilty as charged in Count II of the Information herein; and further find the defendant, John Thomas is guilty as charged in Count II of the Information herein; and further find the defendant, Frank Miller, is guilty as charged in Count III of the Information herein; and further find the defendant, — Anton Bronich, is guilty as charged in Count III of the Informa-



tion herein; and further find the defendant, John Thomas, is guilty as charged in Count III of the Information herein.

RUEL A. RUSSELL,  
Foreman.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 23, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [25]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,  
Defendants.

### MOTION FOR NEW TRIAL.

Come now the defendants above named by their attorney, Fred C. Brown, and severally move the Court, on the files and records herein, for an order setting aside the verdict of the jury herein and granting them a new trial on the following grounds:

#### I.

Irregularity in the proceedings of the Court,

jury, and plaintiff; orders of the Court; and abuse of discretion; by which the defendants were prevented from having a fair trial.

II.

Insufficiency of the evidence to justify the verdict, and that it is against law.

III.

Error in law occurring at the trial and in the Court's ruling upon the petitions for the suppression of the evidence herein and duly excepted to at the time by the defendants.

FRED C. BROWN,  
Attorney for Defendants.

[Endorsed]: Copy of within motion rec'd this 25th day of June, 1925.

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Attorney for Plaintiff.

[Endorsed]: Received Office of U. S. Attorney June 25, 1925, Seattle, Wash.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. June 25, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [26]

United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

ORDER DENYING MOTION FOR NEW  
TRIAL.

The several motions of the defendants for a new trial having come duly on for hearing on the 29th day of June, 1925, the Court having heard the arguments of counsel, and being fully advised in the premises,

IT IS ORDERED that the said motions be, and the same are hereby, denied. Each of the defendants is allowed an exception hereto.

Done in open court, this 6th day of July, 1925.

JEREMIAH NETERER,

Judge.

[Endorsed]: Copy of within order rec'd this  
6th day of July, 1925.

J. W. HOAR,  
Attorney for Pltf.

[Endorsed]: Filed in the United States District  
Court, Western District of Washington, Northern

Division. Jul. 6, 1925. Ed M. Lakin, Clerk.  
By S. M. H. Cook, Deputy. [27]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER,

Defendant.

SENTENCE (FRANK MILLER).

Comes now on the 6th day of July, 1925, the said defendant Frank Miller into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore, by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant is guilty of violating the National Prohibition Act, and that he be punished by being imprisoned in the Whatcom County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for

the term of six months on each of counts I and III, terms to run concurrently, and to pay a fine of \$200.00 dollars on count II. And the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

J. & D. #4, page 384. [28]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTON BRONICH,

Defendant.

### SENTENCE (ANTON BRONICH).

Comes now on this 6th day of July, 1925, the said defendant Anton Bronich into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore by reason of the law and the premises it is considered ordered and adjudged by the Court that the defendant is guilty of violation the National Pro-

hibition Act and that he be punished by being imprisoned in the Whatcom County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the term of six months on each of counts I and III, terms to run concurrently, and to pay a fine of \$200.00 dollars on count II. And the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

J. & D. #4, page 384. [29]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN THOMAS,

Defendant.

SENTENCE (JOHN THOMAS).

Comes now on this 6th day of July 1925, the said defendant John Thomas into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said, where-

fore, by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating the National Prohibition Act and that he be punished by being imprisoned in the Whatcom County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of six months on each of counts I and III, terms to run concurrently, and to pay a fine of \$200.00 dollars on count II. And the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

J. & D. #4, page 385. [30]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH and  
JOHN THOMAS,

Defendants.



PETITION FOR WRIT OF ERROR OF DEFENDANTS FRANK MILLER, ANTON BRONICH AND JOHN THOMAS.

To the Honorable JEREMIAH NETERER, Judge of the Above-entitled Court:

Frank Miller, Anton Bronich, and John Thomas, by their attorney, Fred C. Brown, respectfully petition that on the 6th day of July, 1925, the United States District Court for the Western District of Washington, Northern Division, gave judgment against your petitioners in the above-entitled cause; wherein, as appears from the facts of the record of proceedings herein, certain errors were committed which are more fully set forth in the assignment of errors herein:

Now, therefore, to the end that said matters may be reviewed and said errors corrected by the Circuit Court of Appeals for the Ninth Circuit, your petitioners pray for an allowance of a writ of error, and such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable Justices of the Circuit Court of Appeals for the Ninth Circuit, for review and correction;

And that an order be made, staying and suspending all further proceedings herein, pending the determination of said writ of errors by said Circuit Court of Appeals.

FRED C. BROWN,  
Attorney for Frank Miller, Anton Bronich and John Thomas.

Received a copy of the above order this 6th day of July, 1925.

J. W. HOAR,  
Attorney for Plaintiff. [31]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [32]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH and  
JOHN THOMAS,  
Defendants.

### ASSIGNMENT OF ERRORS.

Now comes the defendants, Frank Miller, Anton Bronich, and John Thomas, by Fred C. Brown, their attorney, and in connection with their petition for a writ of error herein assign the following errors, which he avers occurred at the trial of said cause and which were duly excepted by them, and upon which they rely to reverse the judgment entered herein against them:

#### I.

The District Court erred in denying the petitions

for the suppression of the evidence, seized by the United States Government prohibition officers in their residence on the 29th day of August, 1924, in violation of their rights under the Fourth Amendment to the Constitution of the United States.

## II.

The District Court erred in denying the oral motion to suppress the evidence seized by the United States Government prohibition officers from their residence on the 29th day of August, 1924, in violation of their rights under the Fourth Amendment to the Constitution of the United States.

## III.

The District Court erred in admitting in evidence Government Exhibits Nos. 1, 2, and 3, on the ground that it had been forcibly taken from their residence in violation of their rights under the Fourth Amendments to the Constitution of the United States. [33]

## IV.

The District Court erred in denying the defendants' motion for a directed verdict, challenging the sufficiency of the evidence, made at the close of the Government's case, on the ground of a violation of the defendant's rights under the Fourth and Fifth Amendments to the Constitution of the United States; and further challenging of the evidence as to Anton Bronich and John Thomas, for the reason that they were not on the premises at the time of the execution of the search-warrant, and it was not a violation of the law in the presence of the officers.

## V.

The District Court also erred as follows in admitting in evidence Government's Exhibit No. 1.

## VI.

The District Court erred in admitting in evidence Government's Exhibit No. 2.

## VII.

The District Court erred in admitting in evidence Government's Exhibit No. 3.

## VIII.

The District Court erred in admitting in evidence Government's Exhibit No. 4.

## IX.

The District Court erred in admitting in evidence Government's Exhibit No. 5.

## X.

The District Court erred in admitting in evidence Government's Exhibit No. 7.

## XI.

The District Court erred in compelling the attorney for the defendants to take the witness-stand and testify as follows: [34]

The COURT.—You haven't proven the signatures.

Mr. HOAR.—I will call Mr. Brown.

Mr. BROWN.—Will your Honor compel me to take the witness-stand?

The COURT.—Yes.

Mr. BROWN.—I want the record to show an objection.

The COURT.—Note the objection.

Mr. BROWN.—Exception.

FRED C. BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

(Question by Mr. HOAR.)

Q. Handing you Government's Exhibit 4 for identification, I will ask you,—

Mr. BROWN.—I want the record to show I am an attorney in this case for all the defendants.

The COURT.—Yes, let it be noted.

Q. I will ask you if that is the signature of the defendant John Thomas?

Mr. BROWN.—I want to refuse to testify to that because of privileged communication between attorney and client; for the additional reason, the Government is compelling the defendants to give evidence against themselves, in the Government's case in chief.

The COURT.—The objection is overruled.

Q. (By the COURT.) It appears it is signed "Fred C. Brown, Notary Public," is that your designation?

Mr. BROWN.—If your Honor overrules the objection I want an exception.

Q. I want to know if you are the notary before whom this was taken?

A. Yes, I am a notary.

The COURT.—Objection overruled.

Mr. BROWN.—Exception.

A. Now what is the question?

Q. I will ask you whether the signature there of John Thomas [35] is the signature of the defendant in this case?      A. Yes, sir.

Q. I will ask you, referring to Government's Exhibit 5 for identification, if the signature of Anton Bronich is the signature of the defendant, Anton Bronich, in this case?

Mr. BROWN.—Same objection.

The COURT.—Same ruling.

Mr. BROWN.—Exception.

A. It is.

Q. Referring to Government's Exhibit 6,—

Mr. BROWN.—Same objection.

The COURT.—Same ruling.

Mr. BROWN.—Exception.

Q. I will ask you if that is your signature there as the party swearing to it?

A. That is my signature.

The COURT.—The objection to that is sustained.

Q. That affidavit is as to the defendant Frank Miller made by counsel and filed in court.

The COURT.—The objection is sustained as to Government's Exhibit 6.

Q. Directing your attention to Government's Exhibit No. 7 for identification, I will ask you if the signatures of Frank Miller, John Thomas and Anton Bronich on the separate sheets are the signatures of each of the defendants?

Mr. BROWN.—Same objection.

The COURT.—Same ruling.



Mr. BROWN.—Exception.

A. They are.

Mr. BROWN.—Now I want to renew my objection.

Mr. HOAR.—I would like to read them to the jury.

The COURT.—They have not been admitted yet.

Mr. HOAR.—I will offer Exhibits 4, 5, and 7.

Mr. BROWN.—I want to object on the same grounds as heretofore urged. [36]

The COURT.—Nos. 4, 5, and 7. No. 4, I think this copy of the search-warrant,—

Mr. HOAR.—I don't care to offer that.

The COURT.—That can be detached and the rest can be admitted with the copy detached. No. 5.

(Petition received in evidence and marked Government's Exhibit No. 4.)

Mr. HOAR.—Same situation.

The COURT.—That is the same; that copy of the search-warrant may be detached, and the rest admitted. And No. 7 admitted, and exception noted.

(Petition and affidavit received in evidence and marked Government's Exhibits 5 and 7.)

Mr. BROWN.—I still maintain, according to these petitions for search-warrants, they either went on to those premises in pursuance of the search-warrant, or they went upon it because there was a crime being committed in the presence of the officers; I still maintain that the evidence is fatally defective, it was not a crime in the presence of



Bronich and Thomas; Bronich and Thomas were not upon the premises at the time of the search.

The COURT.—I will overrule the objection.

Mr. BROWN.—Exception.

### XII.

The District Court erred in denying the defendants' renewal of the motion challenging the sufficiency of the evidence at the close of the case, and further on the ground that Anton Bronich and John Thomas were not upon the premises, and it was not a crime committed in the presence of the officers; and that the evidence was obtained in violation of the rights of the defendants under the Fourth and Fifth Amendments to the Constitution of the United States.

### XIII.

The District Court erred in denying defendants' motion for a new trial. [37]

### XIV.

The District Court erred in pronouncing judgment upon the defendants.

WHEREFORE, the said defendants, Frank Miller, Anton Bronich, and John Thomas, plaintiffs in error, pray that the judgment of said Court be reversed, and this cause be remanded to said District Court with instructions to dismiss the same and discharge the plaintiffs in error from custody and exonerate the sureties on their bail bonds; and for

such other and further relief as to the Court seems proper.

FRED C. BROWN,  
Attorney for Defendants, Frank Miller, Anton  
Bronich, and John Thomas.

Due service admitted the 6th day of July, 1925.

J. W. HOAR,  
United States District Attorney.

[Endorsed]: Filed in the United States District  
Court, Western District of Washington, Northern  
Division. Jul. 6, 1925. Ed. M. Lakin, Clerk. By  
S. M. H. Cook, Deputy. [38]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

### ORDER ALLOWING WRIT OF ERROR.

The plaintiffs in error having duly presented  
their petitions for a writ of error and assignments  
of error to the Circuit Court of Appeals, having  
duly issued and the Court having duly fixed the  
bond of plaintiffs in error in the sum of One Thou-

said Five Hundred Dollars (\$1,500) each, and said bonds having been duly filed and approved; now, on motion of the plaintiffs in error,

IT IS ORDERED that the execution of the judgment herein be stayed, pending the determination of the writ of error in the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 6th day of July, 1925.

JEREMIAH NETERER,

Judge.

[Endorsed]: Copy of within ——— rec'd this 6th day of July, 1925.

J. W. HOAR,

Attorney for Ptf.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. July 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [39]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

## APPEAL AND BAIL BOND (FRANK MILLER).

KNOW ALL MEN BY THESE PRESENTS: That we, Frank Miller, as principal, and National Surety Company, as surety, all of Seattle, King County, Washington, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of One Thousand Five Hundred Dollars (\$1,500) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that, whereas the said defendant was, on the 6th day of July, 1925, sentenced in the above-entitled cause \$200.00 and six months Whatcom County Jail, and whereas, the said defendant has sued out a writ of error from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit; and, whereas, the above-entitled Court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of One Thousand Five Hundred Dollars (\$1,500);

Now, therefore, if the said defendant, Frank Miller, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said

Appellate Court shall make, or order to be made in the premises, and shall render himself amenable to and obey all process [40] issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall, pursuant to any order issued by said District Court, surrender himself and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 6th day of July, 1925.

FRANK MILLER.

[Seal] NATIONAL SURETY COMPANY.

By O. B. WHITE,  
Attorney-in-fact.

Approved 6th July, 1925.

NETERER,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, North-

ern Division. July 6, 1925. E. M. Lakin, Clerk.  
By S. M. H. Cook, Deputy. [41]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

APPEAL AND BAIL BOND (ANTON BRO-  
NICH).

KNOW ALL MEN BY THESE PRESENTS:  
That we, Anton Bronich, as principal, and National  
Surety Company, as surety, all of Seattle, King  
County, Washington, are held and firmly bound  
unto the United States of America, plaintiff in  
the above-entitled action, in the penal sum of One  
Thousand Five Hundred Dollars (\$1,500) lawful  
money of the United States, for the payment of  
which, well and truly to be made, we bind our-  
selves, and our and each of our heirs, executors,  
administrators, successors and assigns, jointly and  
severally, firmly by these presents.

THE CONDITION of this obligation is such  
that, whereas the said defendant was, on the 6th  
day of July, 1925, sentenced in the above-entitled



cause to \$200.00 and six *months* Whatcom County Jail, and whereas, the said defendant has sued out a writ of error from the sentence and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit; and, whereas, the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of One Thousand Five Hundred Dollars (\$1,500);

Now, therefore, if the said defendant, Anton Bronich, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said appellate court shall make, or order to be made in the premises, and [42] shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made and entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall, pursuant to any order issued by said District Court, surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said

District Court, then this obligation to be void, otherwise to remain in full force and effect.

Sealed with our seals and dated this 6th day of July, 1925.

ANTON BRONICH.  
NATIONAL SURETY COMPANY.

[Seal]

By O. B. WHITE,  
Attorney-in-fact.

Approved 6th of July, 1925.

NETERER,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [43]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH and  
JOHN THOMAS,

Defendants. 41

APPEAL AND BAIL BOND (JOHN THOMAS).

KNOW ALL MEN BY THESE PRESENTS:  
That we, John Thomas, as principal, and National

Surety Company, as surety, all of Seattle, King County, Washington, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of One Thousand Five Hundred Dollars (\$1,500) lawful money of the United States, for the payment of which, well and truly to be made, we bond ourselves, and our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that, whereas, the said defendant was, on the 6th day of July, 1925, sentenced in the above-entitled cause to \$200.00 and six *months Whatcom* County Jail, and whereas, the said defendant, has sued out a writ of error from the sentence and judgment in said cause to the Circuit Court to Appeals of the United States for the Ninth Circuit; and, whereas, the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of One Thousand Five Hundred Dollars (\$1,500);

Now, therefore, if the said defendant, John Thomas, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made in the premises, and shall render himself amenable to and obey all process issued, or [44] ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of

any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall, pursuant to any order issued by said District Court, surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 6th day of July, 1925.

JOHN THOMAS.

NATIONAL SURETY COMPANY.

[Seal]

By O. B. WHITE,  
Attorney-in-fact.

Approved 6th July, 1925.

NETERER,  
Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 6, 1925. By S. M. H. Cook, Deputy.

[45]

United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

### BILL OF EXCEPTIONS.

BE IT REMEMBERED, that heretofore, to wit, on the 23d of June, 1925, this cause came on for trial before the Honorable Jeremiah Neterer, District Judge, the plaintiff appearing by Thos. P. Revelle and John W. Hoar, United States Attorney and Assistant United States Attorney, respectively, the defendants appearing by Fred C. Brown, their attorney, and thereupon the following proceedings were had:

When said cause was called for trial and before any other proceedings were had therein, the defendants presented to the Court, orally, their several petitions for the suppression of the evidence seized by the Federal Prohibition Agents in their possession and in their residence at 139 Twenty-seventh Avenue North, Seattle, Washington, on the 29th day of August, 1924, on the grounds specified in the formal petitions therefor filed by the defendants, the petition of Frank Miller being verified by his

attorney and the petitions of Anton Bronich and John Thomas being verified by each of them on the 9th day of April, 1925, and after full consideration thereof said petitions were denied and petitioners were allowed an exception.

### TESTIMONY OF W. M. WHITNEY, FOR PLAINTIFF.

Whereupon, W. M. WHITNEY was called as a witness by the plaintiff and after being duly sworn testified that for three years and a half he has been an assistant prohibition director for the State of Washington; [46] that he is acquainted with the defendants Frank Miller and Anton Bronich and is familiar with the residence known as 139 Twenty-seventh Avenue North in the city of Seattle; that he had occasion to visit those premises on the 29th of August, 1924, in the company of agents James A. Johnson and C. W. Cline, together with a driver named Philips, at which time the defendant Frank Miller was working in a little front yard right in front of the door that goes into the basement; that the house consists of a basement, and two stories; that the front part of the premises are up high enough for a basement in the front on Twenty-seventh Avenue; that the basement door had a new lock on it which he had noticed when he had been out there on a previous occasion; that Frank Miller had the basement door open and was working with a plane doing some carpenter work on a trestle; that when he came down the side street from the rear he could distinctly smell the odor from fer-



(Testimony of W. M. Whitney.)

menting mash; that he had smelled that before when he was there; that he could see in the open basement door several empty boxes, raisin boxes—raisins in boxes and boxes without raisins in, half a sack of sugar— part of a sack, about twenty-five (25) or thirty (30) pounds in it, and a 10-gallon keg in burlap with about six inches of the top of the keg showing; This basement is divided into two rooms; he could also see the partition between the two rooms and it was made of new lumber; that there was a door. He stopped and talked with Mr. Miller for a few moments then told him who he was, gave him the search-warrant; \* \* \* the fermenting odor came right out the front door, he could smell it plainly while standing talking to Mr. Miller; he then entered the house—went in the door of a room of the basement—and found several vats with grapes fermenting in them; some of it was low percentage of alcohol—about two or three per cent—and some of the rest of it was completely fermented.

Witness further testified he found one 52-gallon barrel, three 5-gallon kegs, and one 10-gallon keg, all full of wine; the three small [47] kegs were in burlap sacks so fixed that they—that you could take hold of the burlap and carry them, the usual way, from our experience, kegs containing intoxicating liquor *is* carried. That he found several small boxes of raisins, some more sugar, several empty barrels, with a small amount of grape mash in the bottom of the barrels all giving off a very

(Testimony of W. M. Whitney.)

strong odor of fermentation; several empty kegs in burlap sacks of the same kind as in the basement. In the upstairs was a bottle with some moonshine whiskey in one of the rooms. Mr. Miller showed him his room; there were two other rooms in the upstairs part, one of which was occupied by Mr. Bronich. His abstract of the premises were in it, or deed to the premises, and letters all having the name of Anton Bronich on them and giving the address of 504 Sixth Avenue South, which was his place of business. One of the other rooms had clothing, which was occupied by John Thomas; it had letters in there and other personal effects and papers in the name of John Thomas and giving the same address as Anton Bronich's; he also found a coil of a still,—there was an electric stove; for warming the fermenting grape mash; there was hid away seven 50-gallon barrels of wine in the process of fermentation, some complete and some not, making 350 gallons in the barrels in addition to the completed wine.

This basement had fairly recently been partitioned off, the lumber was new, the floor was fairly new on which the barrels were sitting; Mr. Miller stated he had been there some weeks.

Witness further testified from his experience that it is very difficult, especially if it is spilled, to eradicate the smell of intoxicating liquor on premises because it soaks into the lumber—espe-

(Testimony of W. M. Whitney.)

cially if it is new boards—and leaves a very permeating odor, very noticeable.

Witness further said that 504 Sixth Avenue South was the defendants Anton Bronich and John Thomas owned a soft-drink place.

On cross-examination the witness testified that the residence is two stories and a half high and is in the residential section; that [48] the upstairs or second floor is connected with the basement by steps inside the house, there are some steps from the front room into the basement; that the top floor was occupied by the three defendants in three different rooms; that one of the agents had been out there several times and had obtained the search-warrant to search the place, and he had been there once before; that the search-warrant the agent had obtained was the one that he took when he went out on the 29th of August, 1924, with the intention of searching the premises; that the front of the yard the ground is elevated above the street; that he had to walk up two or three steps, and he gave Mr. Miller the search-warrant and spoke a few words and went into the basement and commenced the search; that he did not notice that there was a small amount of wood and coal in the basement.

Witness further testified in redirect examination that the intoxicating liquor had more than one-half of one per cent of alcohol and was fit for beverage purposes as he tasted practically every barrel.

(Testimony of W. M. Whitney.)

Witness further testified that he smelled it on the place before he entered the premises and before even he pulled the search-warrant out of his pocket and served it and told who he was; that Government's Exhibit No. 2 was taken from the 52-gallon barrel; No. 1 was taken from the 10-gallon keg, and the bottle of moonshine, No. 3, was found in one of the upstairs rooms.

Witness further testified on recross-examination that before he went into the house he gave Mr. Miller the search-warrant.

### TESTIMONY OF JAMES A. JOHNSTON, FOR PLAINTIFF.

Whereupon Mr. JAMES A. JOHNSTON was called as a witness for the plaintiff and testified that for two and one-half years he had been a Federal Prohibition Agent; that he was with Mr. Whitney on August 29th at the time they visited the premises at 139 Twenty-seventh Avenue North and helped to search the premises; that they found several barrels of fermenting grape mash; that as they approached the premises the odor of fermenting grapes was plain; that they found some papers which [49] were turned over to Mr. Whitney and he did not examine the papers.

Under cross-examination witness testified that they did not find any corn on the premises, nothing but wine and grapes; that the wine was made, apparently, from raisins.

## TESTIMONY OF C. W. KLINE, FOR PLAINTIFF.

Whereupon Mr. C. W. KLINE was called as a witness for plaintiff and testified that his duties as Federal Prohibition Agent was to take charge of all liquor seized by the agents, keep them, and take them into court, analyze all distilled spirits for their alcoholic contents; that the Government's Exhibit No. 3 was 100 proof, 50 alcohol, fit for beverage purposes; that Exhibits No. 1 and No. 2 had been in his possession and were turned over to Mr. Jacobson on the following Monday after the raid to be analyzed, and the city chemist fetched them back on the following Tuesday or Wednesday, and that they had been in the vault ever since.

Witness further testified that he was in the premises at the time of the raid and saw the wine; that it was possible to smell the fermentation very plainly when they came down the side street; that the basement door was open and that he saw Mr. Miller at the time and he stated that he lived there and had been there about two weeks, and that he was found there fixing up the house.

On cross-examination witness testified the agents went there together and he knew Mr. Whitney had a search-warrant to search the premises, and went there for that purpose and to execute that search-warrant; and that when they got on the premises, Mr. Whitney went up to Mr. Miller and gave him the search-warrant and they all went into the



(Testimony of C. W. Kline.)

building and discovered the liquor; that you could see the liquor before you entered the building, and he saw the keg also in a sack, which was full of wine, before they went into the house. [50]

TESTIMONY OF W. M. WHITNEY, FOR  
PLAINTIFF (RECALLED—CROSS-EX-  
AMINATION).

Mr. WHITNEY, recalled for further cross-examination, testified as follows: That all three defendants lived upon the premises; that Mr. Bronich had the title to them and that he gave back to him the abstract and deed to the property, and he stated he owned the property.

Mr. Whitney further testified on redirect examination that Mr. Bronich, as he remembered, lived in the front room upstairs, Mr. Miller in a small middle room, and Mr. Thomas in the east room; that Mr. Bronich owned the fee title to the property; that he saw the abstract which showed a transfer to Mr. Bronich and that Mr. Bronich told him he owned it, and later came to the office and that he returned the papers to Mr. Bronich; that it was their residence, the three of them occupying the place as their residence.

TESTIMONY OF A. JACOBSON, FOR PLAINTIFF.

Whereupon A. JACOBSON was called as a witness for the plaintiff and testified that he analyzed Government's Exhibits No. 1. and No. 2 for their



(Testimony of A. Jacobson.)

alcoholic content and that Exhibit No. 1 contained 8.5 per cent alcohol and Exhibit No. 2 contained 9.1 per cent of alcohol; that he had been a chemist for twenty-two (22) years.

Mr. HOAR.—I will offer these exhibits in evidence.

Mr. BROWN.—I object to the introduction of this liquor in evidence on the ground it has been forcibly seized and taken from their residence,—the defendants' residence—in violation of their rights under the Fourth and Fifth Amendments to the Constitution of the United States. There is no question about this being the residence of the defendants.

The COURT.—Do these men have families?

Mr. BROWN.—No. They are all single men living on the premises.

The COURT.— \* \* \* the search-warrant was, of course, invalid. \* \* \* the motion is denied.

Mr. BROWN.—Exception.

The COURT.—They will be admitted. [51]

(Government's Exhibits Nos. 1, 2, and 3, bottles of liquor, received in evidence and marked Government's exhibits as above numbered.)

Whereupon the Government rested, and the defendants challenged the sufficiency of the evidence on the ground of the violation of the defendants' rights under the Fourth and Fifth Amendments to the Constitution of the United States, and further challenged the evidence as to Anton Bronich and

(Testimony of Fred C. Brown.)

John Thomas, on the ground that they were not on the premises and it was not violation of law in the presence of the officers.

Whereupon the Government asked the privilege of reopening the case, which was granted.

The COURT.—You haven't proven the signatures.

Mr. HOAR.—I will call Mr. Brown.

Mr. BROWN.—Will Your Honor compel me to take the witness-stand?

The COURT.—Yes.

Mr. BROWN.—I want the record to show an objection.

The COURT.—Note the objection.

Mr. BROWN.—Exception.

## TESTIMONY OF FRED C. BROWN, FOR THE GOVERNMENT.

FRED C. BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

(Questions by Mr. HOAR.)

Q. Handing you Government's Exhibit 4 for identification, I will ask you,—

Mr. BROWN.—I want the record to show I am an attorney in this case for all the defendants.

The COURT.—Yes, let it be noted.

Q. I will ask you if that is the signature of the defendant John Thomas? [52]

Mr. BROWN.—I want to refuse to testify to that because of privileged communication between at-

(Testimony of Fred C. Brown.)

torney and client; for the additional reason, the government is compelling the defendants to give evidence against themselves in the Government's case in chief.

The COURT.—The objection is overruled.

Q. (By the COURT.) It appears it is signed "Fred C. Brown, Notary Public." Is that your designation?

Mr. BROWN.—If your Honor overrules the objection I want an exception.

Q. I want to know if you are the notary before whom this was taken?

A. Yes, I am a notary.

The COURT.—Objection overruled.

Mr. BROWN.—Exception.

A. Now what is the question?

Q. I will ask you whether the signature there of John Thomas is the signature of the defendant in this case? A. Yes, sir.

Q. I will ask you, referring to Government's Exhibit 5 for identification, if the signature of Anton Bronich is the signature of the defendant, Anton Bronich, in this case?

Mr. BROWN.—Same objection.

The COURT.—Same ruling.

Mr. BROWN.—Exception.

A. It is.

Q. Referring to Government's Exhibit 6,—

Mr. BROWN.—Same objection.

The COURT.—Same ruling.

Mr. BROWN.—Exception.

(Testimony of Fred C. Brown.)

Q. I will ask you if that is your signature there as the party swearing to it?

A. That is my signature. [53]

The COURT.—The objection to that is sustained.

Q. That affidavit is as to the defendant Frank Miller made by counsel and filed in court.

The COURT.—The objection is sustained as to Government's Exhibit 6.

Q. Directing your attention to Government's Exhibit No. 7 for identification, I will ask you if the signatures of Frank Miller, John Thomas and Anton Bronich on the separate sheets are the signatures of each of the defendants?

Mr. BROWN.—Same objection.

The COURT.—Same ruling.

Mr. BROWN.—Exception.

A. They are.

Mr. BROWN.—Now I want to renew my objection.

Mr. HOAR.—I would like to read them to the jury.

The COURT.—They have not been admitted yet.

Mr. HOAR.—I will offer Exhibits 4, 5, and 7.

Mr. BROWN.—I want to object on the same grounds as heretofore urged.

The COURT.—Nos. 4, 5, and 7. No. 4, I think this copy of the search-warrant,—

Mr. HOAR.—I don't care to offer that.

The COURT.—That can be detached and the rest can be admitted with the copy detached. No. 5.

(Petition and affidavit received in evidence and marked Government's Exhibit No. 4.)

Mr. HOAR.—Same situation.

The COURT.—That is the same; that copy of the search-warrant may be detached, and the rest admitted. And No. 7 admitted and exception noted.

(Petition and affidavit received in evidence and marked Government's Exhibits 5 and 7.)

Mr. BROWN.—I still maintain, according to these petitions for search-warrants, they either went on to those premises in pursuance of the search-warrant or they went upon it because there was a crime being committed in the presence of the officers; I still maintain that the evidence is fatally defective, it was not a crime in the presence of Bronich and Thomas; Bronich and Thomas were not upon the premises at the time of the search.  
[54]

The COURT.—I will overrule the objection.

Mr. BROWN.—Exception.

Government rests.

Whereupon the defendants challenged the sufficiency of the evidence on the grounds as before enumerated. The motions were denied and exception allowed.

Thereafter, without introducing any evidence, the defendants rest and renew their challenge to the sufficiency of the evidence as before; and further that it was not a crime committed in the presence of the officers by Anton Bronich and John Thomas. The motion was denied and exception noted.

FRED C. BROWN,

Attorney for Plaintiffs in Error.

Settled and allowed this 14 day of July, 1925.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 14, 1925. Ed. M. Lakin, Clerk. By S. E. Leitch, Deputy. [55]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Plaintiffs in Error.

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER SETTLING AND CERTIFYING BILL  
OF EXCEPTIONS.

On this 10th day of July, 1925, the above cause coming on to be heard upon the application of the plaintiffs in error, Frank Miller, Anton Bronich, and John Thomas, to settle a bill of exceptions in said cause, the plaintiffs in error appearing by their attorney Fred C. Brown, and the defendant in error appearing by the United States District Attorney, and it appearing to the Court that the bill of exceptions was duly served on the attorneys for the plaintiffs within the time provided by law, and that,



all the parties consent to the signing and settling of the same, and that the time for settling said bill of exceptions has not expired; and it further appearing to the Court that the said bill of exceptions contains all the material facts occurring in the trial of said cause together with the exceptions thereto, and all the material matters and things occurring upon the trial except the exhibits introduced in evidence, which are hereby made a part of the bill of exceptions, and the clerk of the court is hereby ordered and instructed to properly mark and identify such exhibits and attach the same thereto, or in case it is inconvenient or not practicable to attach said exhibits, to properly identify them in the cause and to forward them unattached, as part of the bill of exceptions;

Thereupon, on motion of the plaintiffs in error, Frank Miller, [56] Anton Bronich, and John Thomas, it is hereby ORDERED that said proposed bill of exceptions be and it is hereby settled as the true bill of exceptions in said cause, and the same is hereby certified accordingly by the undersigned Judge of this court who presided at the trial of said cause, as a true, full and correct bill of exceptions; and the clerk is hereby ordered to file the same as the record in said cause and to transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

JEREMIAH NETERER,  
District Judge.

Copy of attached bill of exceptions received and the service thereof admitted upon 11th July, 1925.

THOS. P. REVELLE,

J. W. HOAR,

Attorneys for Defendant in Error. [57]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please make a transcript of record on appeal to the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, and include therein the following:

Information.

The petitions of Frank Miller, Anton Bronich, and John Thomas to suppress evidence, with the attached copies of affidavit for search-warrant and search-warrant.

Affidavit supporting motion.

Decision on motion to suppress evidence, filed May 13, 1925.

Plea.

Record of trial and impaneling of jury.

Verdict.

Motion for new trial.

Order denying motion for new trial.

Judgment and sentence.

Petition for writ of error.

Assignments of error.

Order allowing writ of error and fixing the amount  
of bond.

Appeal and bail bond.

Bill of Exceptions.

Order settling bill of exceptions.

Writ of error. [58]

Citation.

Praeceptum for transcript of record.

We waive the provisions of the act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

FRED C. BROWN,

Attorney for Plaintiffs in Error Frank Miller,  
Anton Bronich and John Thomas.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 22, 1925. Ed. M. Lakin, Clerk. By S. E. Leitch, Deputy. [59]

United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 59 inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true, and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiffs in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause to wit: [60]

Clerk's fees (Act of February 11, 1925) for making record, certificate or return, 153 folios at 15¢.....	\$22.95
Certificate of Clerk to Transcript of Record, with seal .....	.50
Certificate of Clerk to Original Exhibits, with seal .....	.50
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Total .....	\$23.95

I hereby certify that the above cost for preparing and certifying record, amounting to \$23.95, has been paid to me by attorney for plaintiffs in error.

I further certify that I hereto attach and herewith transmit the original writ of error and citation on writ of error issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 4th day of August, 1925.

[Seal] ED. M. LAKIN,  
Clerk, United States District Court, Western Dis-  
trict of Washington.

By S. E. Leitch,  
Deputy. [61]

United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

WRIT OF ERROR.

The President of the United States to the Honorable  
JEREMIAH NETERER, Judge of the District  
Court of the Western District of Washington,  
Northern Division, and to the said Court,  
GREETINGS:

Because in the record and proceedings as also  
in the rendition of the judgment and sentence in  
the District Court of the United States for the  
Western District of Washington, Northern Divi-  
sion, in a cause pending therein wherein the United  
States of America was plaintiff and Frank Miller,  
Anton Bronich, and John Thomas were defend-  
ants, it is charged a manifest error happened and  
occurred to the damage of the said defendants, the  
above-named plaintiffs in error, as by their peti-  
tions and complaint doth appear, and we being  
willing that error, if any there hath been, should be  
corrected and full and speedy justice be done to the  
parties aforesaid in this behalf, do command you



that under your seal you send the record and proceedings aforesaid with all things concerning the same and pertaining thereto to the United States Circuit Court of Appeals for the Ninth Circuit together with this writ so that you may have same at San Francisco where said Court is sitting within Thirty (30) days from the date hereof in the said Circuit Court of Appeals to be then and there held and the records and proceedings aforesaid being inspected the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right and according to the law and custom of the United States should be done.  
[62]

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 6th day of July, 1925.

[Seal]

ED. M. LAKIN,  
Clerk of the United States District Court of the  
Western District of Washington.

By S. E. Leitch,  
Deputy.

Allowed this 6th day of July, 1925.

JEREMIAH NETERER,  
District Judge.

Received a copy of the foregoing writ of error this  
6th day of July, 1925.

J. W. HOAR,  
United States District Attorney.

[Endorsed]: Filed in the United States District  
Court, Western District of Washington, Northern

Division. Jul. 6, 1925. Ed. M. Lakin, Clerk. By  
S. M. H. Cook, Deputy. [63]

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United States District Court, Western District of  
Washington, Northern Division.

No. 9333.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK MILLER, ANTON BRONICH, and  
JOHN THOMAS,

Defendants.

### CITATION ON WRIT OF ERROR.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear in session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office in the United States District Court for the Western District of Washington, Northern Division, wherein Frank Miller, Anton Bronich, and John Thomas are plaintiffs in error and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against these defendants as in said writ of error mentioned should not be corrected and why speedy

justice should not be done the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, this 6th day of July, 1925.

[Seal]

JEREMIAH NETERER,

District Judge.

Due service of a copy of the foregoing citation admitted this 6th day of July, 1925.

J. W. HOAR,

United States District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jul. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [64]

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[Endorsed]: No. 4666. United States Circuit Court of Appeals for the Ninth Circuit. Frank Miller, Anton Bronich, and John Thomas, Plaintiffs in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division. Filed August 17, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.